

committee eligible to vote. The voting on the recommendation of a standard shall be conducted by the Department if conducted by letter ballot. If such voting is accomplished at a meeting of the committee, the balloting shall be either by roll call or by signed written ballot conducted by the Department or the chairman of this committee. If conducted by the chairman, a report of the vote shall be made to the Department within 15 days. If the balloting at the meeting does not result in either approval by at least three-quarters of all members (or alternates) eligible to vote (whether present or not), or rejection by more than one-quarter of the members (or alternates) or the committee eligible to vote, the balloting shall be disregarded and the Department shall subsequently conduct a letter ballot of all members of the committee.

(c) Any member of the committee casting a negative ballot shall have the right to support an objection by furnishing the chairman of the committee and the Department with a written statement setting forth the basis for the objection. The written statement of objection shall be filed within 15 days after the date of the meeting during which the voting on the standard was accomplished, or, in the case of a letter ballot, within the time limit established for the return of the ballot.

(d) At the time a recommended standard is submitted to the Department, the Chairman of the Standard Review Committee shall furnish a written report in support of the committee's recommendation. Such report shall include a statement with respect to compliance with the requirements as established by these procedures, a discussion of the manner in which any objections were resolved, and a discussion of any unresolved objections together with the committee's reasons for rejecting such unresolved objections.

#### **§ 10.6 Procedures for acceptance of a recommended standard.**

(a) Upon receipt from the Standard Review Committee of a recommended standard and report, the Department shall give appropriate public notice

and distribute the recommended standard for acceptance unless:

(1) Upon a showing by any member of the committee who has voted to oppose the recommended standard on the basis of an unresolved objection, the Department determines that if such objection were not resolved, the recommended standard:

(i) Would be contrary to the public interest, if published;

(ii) Would be technically inadequate; or

(iii) Would be inconsistent with law or established public policy; or

(2) The Department determines that all criteria and procedures set forth herein have not been met satisfactorily or that there is a legal impediment to the recommended standard.

(b) Distribution for acceptance or rejection for the purpose of determining general concurrence will be made to a list compiled by the Department, which, in the judgment of the Department, shall be representative of producers, distributors, and users and consumers.

(c) Distribution for comment will be made to any party filing a written request with the Department, and to such other parties as the Department may deem appropriate, including testing laboratories and interested State and Federal agencies.

(d) The Department shall analyze the recommended standard and the responses received under paragraphs (b) and (c) of this section. If such analysis indicates that the recommended standard is supported by a consensus, it shall be published as a Voluntary Product Standard by the Department: Provided, That all other requirements listed in these procedures have been satisfied.

(e) The following definitions shall apply to the term used in this section:

(1) "Consensus" means general concurrence and, in addition, no substantive objection deemed valid by the Department.

(2) "General concurrence" means acceptance among those responding to the distribution made under paragraph (b) of this section in accordance with the conditions set forth in paragraph (f) of this section.

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(3) “Substantive objection” means a documented objection based on grounds that one or more of the criteria set forth in these procedures has not been satisfied.

(4) “Average industry acceptance” means a percentage equal to the sum of the percentages of acceptance obtained from responses to distribution of the recommended standard in the producer segment, the distributor segment, and the user and consumer segment, divided by three. No consideration will be given to volume of production or volume of distribution in determining average industry acceptance.

(5) “Producer segment” means those persons who manufacture or produce the product covered by the standard.

(6) “Distributor segment” means those persons who distribute at wholesale or retail the product covered by the standard.

(7) “User and consumer segment” means those persons who use or consume the product covered by the standard.

(8) “Acceptance by volume of production” means the weighted percentage of acceptance of those responding to the distribution in the producer segment. The weighting of each response will be made in accordance with the volume of production represented by each respondent.

(9) “Acceptance by volume of distribution” means the weighted percentage of acceptance of those responding to the distribution in the distributor segment. The weighting of each response will be made in accordance with the volume of distribution represented by each respondent.

(f) A recommended standard shall be deemed to be supported by general concurrence whenever:

(1) An analysis of the responses to the distribution under paragraph (b) of this section indicates:

(i) An average industry acceptance of not less than 75 percent;

(ii) Acceptance of not less than 70 percent by the producer segment, the distributor segment, and the user and consumer segment, each segment being considered separately; and

(iii) Acceptance by volume of production and acceptance by volume of distribution of not less than 70 percent in

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each case: *Provided*, That the Department shall disregard acceptance by volume of production or acceptance by volume of distribution or both unless, in the judgment of the Department, accurate figures for the volume of production or distribution are reasonably available and an evaluation of either or both of such acceptances is deemed necessary by the Department; or

(2) The Department determines that publication of the standard is appropriate under the procedures set forth in paragraph (g) of this section and, in addition, an analysis of the responses to the distribution under paragraph (b) of this section indicates:

(i) An average industry acceptance of not less than 66⅔ percent;

(ii) Acceptance of not less than 60 percent by the producer segment, the distributor segment, and the user and consumer segment, each segment being considered separately; and

(iii) Acceptance by volume of production and acceptance by volume of distribution of not less than 60 percent in each case: *Provided*, That the Department shall disregard acceptance by volume of production or acceptance by volume of distribution or both unless, in the judgment of the Department, accurate figures for the volume of production or distribution are reasonably available and an evaluation of either or both of such acceptances is deemed necessary by the Department.

(g) A recommended standard which fails to achieve the acceptance requirements of paragraph (f)(1) of this section, but which satisfies the acceptance criteria of paragraph (f)(2) of this section, shall be returned to the Standard Review Committee for reconsideration. The committee, by the affirmative vote of not less than three-quarters of all members eligible to vote, may resubmit the recommended standard without change to the Department with a recommendation that the standard be published as a Voluntary Product Standard. The Department shall then conduct a public rulemaking hearing in accordance with the requirements of law as set forth in section 553 of Title 5, United States Code, to assist it in determining whether publication of the standard is in the public interest. If the Department determines that

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publication of the standard is in the public interest, the standard shall be published as a Voluntary Product Standard.

### § 10.7 Procedure when a recommended standard is not supported by a consensus.

If the Department determines that a recommended standard is not supported by a consensus, the Department may:

(a) Return the recommended standard to the Standard Review Committee for further action, with or without suggestions;

(b) Terminate the development of the recommended standard under these procedures; or

(c) Take such other action as it may deem necessary or appropriate under the circumstances.

### § 10.8 Standing Committee.

(a) The Department shall establish and appoint the members of a Standing Committee prior to the publication of a standard. The committee may include members from the Standard Review Committee, and shall consist of qualified representatives of producers, distributors, and users or consumers of the product covered by the standard, and representatives of appropriate general interest groups such as municipal, State, and Federal agencies. When requested by the Standing Committee, the Department shall appoint one voting member from among the representatives of the Federal agencies, other than the Department of Commerce. When requested by the Standing Committee for PS 20-70, "American Softwood Lumber Standard," the Department shall appoint two voting members from among the representatives of the Federal agencies, other than the Department of Commerce. All other representatives of Federal agencies shall be advisory nonvoting members of Standing Committees. (Alternates to committee members may be designated by the Department.) When deemed appropriate by the Department, project funds under § 10.2, may be made available to assure participation by consumer interests on the committee at required meetings.

(b) Appointments to a Standing Committee may not exceed a term of 5 years. However, the committee may be reconstituted by the Department whenever appropriate, and members may be reappointed by the Department to succeeding terms. Appointments to the committee will be terminated upon the withdrawal of the standard.

(c) The Department shall be responsible for the organization of the committee. Any formal operating procedures developed by the committee shall be subject to approval by the Department. The committee may conduct business either in a meeting or through correspondence, but only if a quorum participates. A quorum shall consist of two-thirds of all voting members of the committee. A majority of the voting members of the committee participating shall be required to approve any actions taken by the committee except for the approval of revisions of the standard which shall be governed by the provisions of § 10.5 (b), (c), and (d).

(d) The members of a Standing Committee should be knowledgeable about:

(1) The product or products covered by the standard;

(2) The standard itself; and

(3) Industry and trade practices relating to the standard.

(e) The committee shall:

(1) Keep itself informed of any advancing technology that might affect the standard;

(2) Provide the Department with interpretations of provisions of the standard upon request;

(3) Make recommendations to the Department concerning the desirability or necessity of revising or amending the standard;

(4) Receive and consider proposals to revise or amend the standard; and

(5) Recommend to the Department the revision or amendment of a standard.

### § 10.9 Publication of a standard.

A Voluntary Product Standard published by the department under these procedures shall be assigned an appropriate number for purposes of identification and reference. Public notice shall be given regarding the publication and identification of the standard. A voluntary standard by itself has no